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| APPLICATION NO.                                                                                                       | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------------------------------------------------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| 10/792,180                                                                                                            | 03/03/2004  | James T. Russell     | 02-68               | 4931             |
| 30031                                                                                                                 | 7590        | 02/06/2006           | EXAMINER            |                  |
| MICHAEL W. HAAS, INTELLECTUAL PROPERTY COUNSEL<br>RESPIRONICS, INC.<br>1010 MURRY RIDGE LANE<br>MURRYSVILLE, PA 15668 |             |                      | TANINGCO, MARCUS H  |                  |
|                                                                                                                       |             |                      | ART UNIT            | PAPER NUMBER     |
|                                                                                                                       |             |                      | 2884                |                  |

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

H.A

**Office Action Summary**

Application No.

10/792,180

Applicant(s)

RUSSELL, JAMES T.

Examiner

Marcus H. Taningco

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,6,10 and 12-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,6,10 and 12-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                         |                                                                             |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)     | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____                                                             | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### **Response to Amendment**

Amendments filed 11/17/05 canceling claims 4, 5, and 7-9 while adding new claims 13-16 has been entered. Claims 1-3, 6, 10, and 12-16 are subject to examination herein.

### **Response to Arguments**

Applicant's arguments with respect to claims 1-3, 6, 10, and 12 have been considered but are moot in view of the new ground(s) of rejection.

### **Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 10 rejected under 35 U.S.C. 102(b) as being anticipated by Brunamoti et al. (US 2001/0048079).

Re claims 1 and 10, Brunamoti discloses a gas analyzer comprising: an infrared source **30**, an infrared detector **40**, a sample cell **17** adapted to be disposed between the source **30** and detector **40**, wherein the sample cell **17** includes a gas inlet **15** at a first end portion of the sample cell **17**, a gas outlet **16** at a second end portion of the sample cell **17**, and a gas flow passage defined in the sample cell **17** between the gas inlet **15** and the gas outlet **16**, wherein the gas flow passage is generally parallel to the optical path **80** between the source **30** and the detector **40**

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such that the gas flow passage defines a sample chamber **12**, wherein a length of the gas flow passage defining the sample chamber **12** is greater than a width of the gas flow passage, and wherein at least a portion of a wall defining the gas flow passage includes an infrared reflective surface [0053] (Figs. 1-3).

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunamoti et al. as applied to claim 1 above, and further in view of Eckles (US 6,369,387).

Re claims 2 and 3, Brunamoti teaches a portion of a wall defining the gas flow passage includes an infrared reflective surface [0053], but fails to specify the type of material. Eckles teaches the use of gold, a high index material, to reflect infrared beams (Col. 4, 26-29). Thus, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the material **18** taught by Brunamoti to include gold in order to increase reflectance.

Claims 6 and 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunamoti et al. in view of O'Leary (US 2002/0153490).

Re claims 6 and 12-16, Brunamoti discloses a gas analyzer comprising: an infrared source **30**, an infrared detector **40**, a sample cell **17** adapted to be disposed between the source **30**

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and detector 40, wherein the sample cell 17 includes a gas inlet 15 at a first end portion of the sample cell 17, a gas outlet 16 at a second end portion of the sample cell 17, and a gas flow passage defined in the sample cell 17 between the gas inlet 15 and the gas outlet 16, wherein the gas flow passage is generally parallel to the optical path 80 between the source 30 and the detector 40 such that the gas flow passage defines a sample chamber 12, wherein a length of the gas flow passage defining the sample chamber 12 is greater than a width of the gas flow passage, and wherein at least a portion of a wall defining the gas flow passage includes an infrared reflective surface [0053] (Figs. 1-3). Brunamoti fails to disclose a high numerical aperture lens. O'Leary teaches a concentration detection system comprising a high numerical aperture lens 86 disposed to collimate radiation received from the source [0040]. It would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Brunamoti to include the lens taught by O'Leary in order to integrate the collimated radiation passing through the sample cell evenly over the detector.

Re claims 13-16, Brunamoti discloses a system according to claim 1, but fails to disclose a high numerical aperture lens. O'Leary teaches a concentration detection system comprising a high numerical aperture (half-ball) lens 86 disposed to collimate radiation received from the source [0040]. It would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Brunamoti to include the lens taught by O'Leary in order to integrate the collimated radiation passing through the sample cell evenly over the detector.

## **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marcus H. Taningco whose telephone number is (571) 272-1848. The examiner can normally be reached on M - F 9:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Porta can be reached on (571) 272-2444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MT



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